

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested.

The Examiner objects to the drawings noting that the copper pairs 14 and 24 be identified in the Figures and that the blocks be labeled with the functional descriptors. Attached to this response are replacement sheets for Figures 1-3 which provide the reference numerals and functional labels required by the Examiner. Acceptance of the replacement sheets and withdrawal of the objections to the drawings are requested.

The Examiner noted several formalities with respect to the specification. These have been overcome by amendment. Withdrawal of the objection to the specification is respectfully requested.

The Examiner notes a number of informalities in the Abstract. A new Abstract is submitted with this response. Withdrawal with the objection to the Abstract is requested.

Claims 9-16 stand objected based on "characterized in that" transitional language. This objection is moot since these claims are canceled in favor of the newly-submitted claims.

Claims 9-16 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,014,431 to McHale et al. This rejection is respectfully traversed.

The instant claims are directed to the problem of installing broadband connections for a large number of subscribers in a short period of time and with minimal effort from technically qualified staff. For example, it would be desirable to effect mass connection

of customers having accepted an agreement for a high speed Internet access service without encountering a serious bottle neck in the process. Two groups of modems are provided including a pool of xDSL modems at an access point, and another group of directly accessible modems at another access point. Initial broadband connections are set up using the first group of xDSL modems for potential subscribers to the broadband service. As customers accept the offered service and become actual subscribers of the broadband service, those customer connections may be transferred from the xDSL modems in the modem pool and to direct access modems in the second group. As subscribers are transferred to the direct access modems, the modems in the xDSL modem pool are made available for new potential broadband access subscribers.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). McHale fails to satisfy this rigorous standard.

McHale discloses a communication system shown in Figure 1 with a central office 14 that includes a communication server 58 used to provide high speed data communications service. Basic elements of the server 58 are shown in Figure 2, more details of the controller 80 are shown in Figure 3, and further details of the switch and

modem pool are shown in Figure 4. Since all subscribers do not necessarily desire access to data communications services on a continuous basis and many have different needs, McHale reduces the number of high speed modem resources without subscribers detecting any reduction in service.

The Examiner contends that McHale discloses two groups of access point modems in Fig. 10A, making reference to block 510 for the pool of modems, and column 16, lines 11-16 for the direct access modems. Column 16, lines 11-16 are repeated here for convenience:

transmit data pairs 512 and receive data pairs 514 contain a number of pairs equal to the number of modems in modem pool 510. As described above, modems in modem pool 510 convert signals in an appropriate XDSL communication protocol into digital data in an appropriate digital protocol on digital lines 76.

This text does not describe two different groups of xDSL modems. Indeed, the only access point xDSL modems described by McHale are those in the modem pool 510.

Thus, McHale lacks both "a pool of xDSL compatible modems and xDSL filters forming a first group" and "a second group of direct access, xDSL compatible modems separate from the first group" as recited in independent claims 17.

McHale further fails to disclose the controller of claim 17 adapted:

to control the first group of pooled xDSL compatible modems to transfer at least one connection between the user terminal and the access point from the first group of pooled xDSL compatible modems to the second group of XDSL compatible modems to make available a pre-provisioned broadband access point.

Applicant finds no transfer of a connection one group of modems to another group of modem described in McHale. The Examiner refers to column 16, lines 21-30, which describes a controller 80 checking for available modems in the modem pool 510 and assigning a modem from the modem pool 510 to a requesting data line 54 using a switch matrix 502. There is no discussion of transferring an already-established connection using one of the modems in the modem pool 510 to another modem **not** included in the modem pool 510.

The net terminal in claim 17 further includes both a xDSL compatible modem as well as "a second modem for initial installation of the connection, which is monitored and controlled by a controller until a connection is established." These features are also lacking from McHale.

McHale also lacks features from independent method claim 24. For example, McHale fails to disclose transferring "at least one connection between the user terminal and the access point from a first group of pooled xDSL compatible modems with associated filters to a second group of xDSL compatible modems with direct access, whereby at least one new pre-provisioned broadband access point is made available." McHale also fails to disclose a net terminal that includes both "an xDSL compatible modem" and "a second modem." In this regard, McHale does not teach "creating a bi-directional broadband data transmission path between the user terminal and the at least one access point using a second modem connection of the net terminal for initial installation of the broadband data transmission path."

Claim 26 recites "a pool xDSL modems" and "a group of direct access xDSL modems separate from the pool of xDSL modems." Two different sets of xDSL modems are simply not taught in McHale. McHale further fails to disclose:

a controller configured to establish a bi-directional broadband connection between multiple user terminals to the first access point using xDSL modems from the pool of xDSL modems, and sometime thereafter, to transfer one or more of the established connections to one or more xDSL modems from the group of direct access xDSL modems.

Features of claims that depend upon claim 26 are also not found in McHale. For example, claim 32 recites that "each net terminal further includes an in-band xDSL modem in addition to the net terminal xDSL modem." McHale simply discloses one modem 30 in the network interface.

Independent claim 36 recites features not disclosed in McHale. For example, McHale does not teach "creating a bi-directional broadband data transmission connection between the user terminal and the first access point using one of a pool of xDSL modems at the first access point" and "transferring the bi-directional broadband data transmission connection from the one xDSL modem from the pool to another, direct access xDSL modem." Nor does McHale teach the features of claim 37 that such a transfer "frees up the one xDSL modem from the pool for a bi-directional broadband data transmission connection for another user." As described above, McHale fails to teach features of claim 38:

using an in-band modem at the net terminal, separate from the xDSL modem at the net terminal, in initially installing the bi-directional broadband data transmission connection.

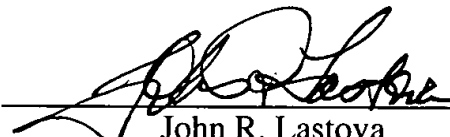
Claim 15 stands provisionally rejected under 35 U.S.C. 101 as allegedly claiming the same invention as that of claim 14 of copending application serial number 09/732,879. Although Applicants do not agree with the Examiner's double patenting rejection, Applicants submit a Terminal Disclaimer to obviate this rejection. Withdrawal of the provisional double patenting rejection is respectfully requested.

As explained above, McHale fails to disclose multiple features recited in the independent and dependent claims. Applicants therefore respectfully submit that the present application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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